

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of CLAD \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [Macri, Andrea \(EOIR\)](#); [EOIR Library \(EOIR\)](#)  
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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

| Policy & Case Law Bulletin  
August 17, 2018

**Federal Agencies**

**DOJ**

- [Attorney General Issues Decision in Matter of L-A-B-R- et al.](#)

27 I&N Dec. 405 (A.G. 2018)

(1) An immigration judge may grant a motion for a continuance of removal proceedings only “for good cause shown.” 8 C.F.R. § 1003.29. (2) The good-cause standard is a substantive requirement that limits the discretion of immigration judges and prohibits them from granting continuances for any reason or no reason at all. (3) The good-cause standard requires consideration and balancing of multiple relevant factors when a respondent alien requests a continuance to pursue collateral relief from another authority—for example, a visa from the Department of Homeland Security. See [Matter of Hashmi](#), 24 I&N Dec. 785, 790 (BIA 2009). (4) When a respondent requests a continuance to pursue collateral relief, the immigration judge must consider primarily the likelihood that the collateral relief will be granted and will materially affect the outcome of the removal proceedings. (5) The immigration judge should also consider relevant secondary factors, which may include the respondent’s diligence in seeking collateral relief, DHS’s position on the motion for continuance, concerns of administrative efficiency, the length of the continuance requested, the number of hearings held and continuances granted previously, and the timing of the continuance motion.

- [EOIR Announces Investiture of 23 New Immigration Judges; Hiring Times Reduced by More Than 50% — EOIR](#)

On August 16, 2018, EOIR announced that it has appointed 23 new immigration judges, bringing the total count to 351 nationwide. “Since the end of January 2017, 82 immigration judges have been sworn in,” and “at least 75 more immigration judges” are anticipated to be hired this fall. Some of the immigration judges sworn in on August 10, 2018, were hired in approximately 266 days, down from an average of 742 days one year ago.

- [DOJ Secures Denaturalization of Guardian Convicted of Sexual Abuse of A Minor](#)

On August 8, 2018, the Chief Judge of the U.S. District Court for the Eastern District of North Carolina entered an order that revoked the naturalized U.S. citizenship of a child sex offender; restrained and enjoined him from claiming any rights, privileges, or advantages of U.S. citizenship; and ordered him to immediately surrender and deliver his Certificate of Naturalization and any other indicia of U.S. citizenship to federal authorities.

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications. There are updates to country conditions information on Maldives, Georgia, and Brazil.

#### DHS

- [Re-Registration Period Now Open for Temporary Protected Status for Yemen](#)

On August 14, 2018, USCIS announced that current beneficiaries of Temporary Protected Status (TPS) under Yemen's designation who want to maintain their status through the extension date of March 3, 2020, must re-register between August 14, 2018, and October 15, 2018. Re-registration procedures, including how to renew employment authorization documents (EADs), have been published in the [Federal Register](#).

- [Filing Location Change for Form I-829](#)

On August 13, 2018, USCIS changed the filing location for Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status. This form was previously filed at the California Service Center. Now, petitioners must send Form I-829 to a USCIS Lockbox facility.

#### DOL

- [Updated List Containing FY 2018 H-2B Foreign Labor Recruiters](#)

The Office of Foreign Labor Certification has published an updated list of the names of foreign labor recruiters. "The list also contains the identity and location of persons or entities hired by, or working for, the recruiter that employers have indicated they engaged, or planned to engage, in the recruitment of prospective H-2B workers to perform the work described on their Form ETA-9142B, H-2B Application for Temporary Employment Certification."

#### DOS

- [Review of the Terrorist Designations of Boko Haram and Abu Sayyaf](#)

On August 17, 2018, notices were published in the Federal Register that the Secretary of State will continue to maintain the designations of Boko Haram (and other aliases) and Abu Sayyaf (and other aliases) as Foreign Terrorist Organizations (FTOs) pursuant to the Act.

- [DOS Posts September 2018 Visa Bulletin](#)

The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to section [302.11 \(U\)](#), revising guidance related to unlawful presence in relation to individuals initially granted duration of status when admitted, and section [601.12\(U\)](#), revising special clearances to remove Guinea as sanctions were lifted under INA 243(d).

### First Circuit

- [Sihotang v. Sessions](#)

No. 17-2183, 2018 WL 3868837 (1st Cir. Aug. 15, 2018) (Motions; Changed Country Conditions )

The First Circuit granted the PFR, concluding that the Board erred in denying an untimely motion to reopen based on changed country conditions by Sihotang, an evangelical Christian Indonesian. The court concluded that the Board “appears to have completely overlooked critical evidence,” and that “the record reflects a ramping-up of religious intolerance, increasing over time, in ways that a reasonable observer might find uniquely problematic for evangelical Christians.”

- [Lemus v. Sessions](#)

No. 17-2068, 2018 WL 3853447 (1st Cir. Aug. 14, 2018) (Motions)

The First Circuit denied the PFR, concluding that the Board did not abuse its discretion in denying the motion to reopen, which was based on anticipated eligibility for adjustment of status, as untimely and number-barred. The court also dismissed for lack of jurisdiction the challenge to the Board’s denial of sua sponte reopening based on exceptional circumstances.

## Second Circuit

- [Jaen v. Sessions](#)

No. 17-1512, 2018 WL 3826019 (2d Cir. Aug. 13, 2018) (Citizenship)

The Second Circuit granted the PFR for Jaen, the stepson of a U.S. citizen at the time of his birth, holding that the Act incorporates the common law meaning of “parent” into former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), “such that a child born into a lawful marriage is the lawful child of those parents, regardless of the existence or nonexistence of any biological link.” The court held that former section 301(a)(7) of the Act “does not include a requirement that an individual be a biological parent in order to be a ‘parent’ for purposes of transmitting citizenship to their child at birth.”

- [Baba v. Sessions](#)

No. 16-278, 2018 WL 3814573 (2d Cir. Aug. 10, 2018) (unpublished) (Credibility & Corroboration)

The Second Circuit granted the PFR and remanded due to improper fact-finding by the Board as to a material omission in Baba’s testimony and due to the IJ improperly finding that Baba’s testimony was too vague to meet his burden of proof when he had identified sufficient facts to meet his burden of proof for his asylum application.

## Third Circuit

- [United States v. Peppers](#)

No. 17-1029, 2018 WL 3827213 (3d Cir. Aug. 13, 2018) (Crime of Violence; Aggravated Felony; ACCA)

The Third Circuit concluded that Pennsylvania burglary under 18 Pa. Cons. Stat. § 3701(a) is categorically not an ACCA crime of violence, which is analogous to 18 U.S.C. § 16(a), or a categorical match to the generic definition of burglary.

- [Villa v. Attorney Gen. of U.S.](#)

No. 17-3094, 2018 WL 3769178 (3d Cir. Aug. 8, 2018) (unpublished) (Cancellation)

The Third Circuit granted the PFR, concluding that although Villa’s unconsummated proxy marriage is not a valid marriage under United States law, it nevertheless may establish a valid parent-child relationship pursuant to [Matter of B-](#), 5 I&N Dec. 698 (BIA 1954). The court determined that although Villa’s wife was not a “spouse” for immigration purposes, his stepson could be considered a “child” and thus a qualifying relative for his application

for cancellation of removal.

### Seventh Circuit

- [United States v. Elder](#)

No. 17-2207, 2018 WL 3866337 (7th Cir. Aug. 15, 2018) (Controlled Substances)

The Seventh Circuit concluded that Elder's dangerous drug conviction under Arizona Revised Statutes § 13-3407(A)(3) does not qualify as a felony drug offense under 21 U.S.C. § 802(44), holding that Arizona's definition of "dangerous drug" is broader than the list of drugs covered by 21 U.S.C. § 802(44) and is not a divisible statute as to the type of dangerous drug.

### Eighth Circuit

- [Degbe v. Sessions](#)

No. 17-1338, 2018 WL 3827421 (8th Cir. Aug. 13, 2018) (Asylum)

The Eighth Circuit denied the PFR, agreeing with the IJ that Degbe was ineligible for withholding of removal because DHS rebutted his presumption of a well-founded fear of persecution under 8 C.F.R. § 1208.13(b)(1), by demonstrating a fundamental change in circumstances in Ghana. Given DHS's showing "that the democratic process in Ghana had become smoother, less violent, and more stable since Degbe suffered the attack and left the country," the IJ also properly denied CAT protection.

- [Garcia Payeras v. Sessions](#)

No. 17-1584, 2018 WL 3767350 (8th Cir. Aug. 9, 2018) (Motions)

The Eighth Circuit granted the PFR and remanded for the Board to address whether Garcia Payeras's inability to receive proper medical treatment constituted exceptional circumstances under sections 240(b)(5)(C)(i) and 240(e)(1) of the Act, sufficient to excuse her failure to appear for her removal hearing. Also, the court was unable to determine whether the Board found Garcia Payeras ineligible for asylum because she was no longer present in the United States (see section 208(a)(1) of the Act), or because she abandoned her asylum application when she left the United States.

### Ninth Circuit

- [Zhu v. Sessions](#)

No. 16-71226, 2018 WL 3866346 (9th Cir. Aug. 15, 2018) (unpublished) (Motions; Changed Country Conditions)

The Ninth Circuit granted the PFR, concluding that the Board abused its discretion in denying a motion to reopen based on changed country conditions. The court noted that "Zhu submitted numerous United States government reports and local Chinese government documents demonstrating a material change in China's enforcement of its restrictive family-planning policies between 2004 and 2015," and held that the Board abused its discretion by failing to meaningfully consider the evidence submitted by Zhu.

- [Lanuza v. Love](#)

No. 15-35408, 2018 WL 3848507 (9th Cir. Aug. 14, 2018) (Attorney Conduct)

The Ninth Circuit held that a Bivens remedy is available in a case in which a DHS trial attorney intentionally submitted a forged document in an immigration proceeding to

completely bar an individual from pursuing relief (specifically, an I-826 with Lanuza's forged signature accepting voluntary departure). In [Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics](#), 403 U.S. 388 (1971), the Supreme Court recognized an implied right of action for damages against federal officers alleged to have violated a plaintiff's constitutional rights.

- [Vasquez-Valle v. Sessions](#)

No. 13-74213, 2018 WL 3795325 (9th Cir. Aug. 10, 2018) (CIMT)

The Ninth Circuit granted the PFR, concluding that witness tampering under Oregon Revised Statutes § 162.285 is not categorically a CIMT. The court also concluded that although the statute is divisible, the subsection under which Vasquez-Valle was convicted —§ 162.285(1)(b)—is likewise not a categorical match for a crime involving moral turpitude because the minimum conduct punished does not require fraud or depravity.

### **Tenth Circuit**

- [United States v. Mann](#)

No. 17-2117, 2018 WL 3798284 (10th Cir. Aug. 10, 2018) (Crime of Violence; ACCA)

The Tenth Circuit concluded that assault resulting in serious bodily injury under 18 U.S.C. § 113(a)(6) is categorically an ACCA crime of violence, which is analogous to 18 U.S.C. § 16(a). The court extended the reasoning in [Voisine v. United States](#), 136 S. Ct. 2272 (2016), to conclude that reckless conduct is no less “the [volitional] use . . . of physical force against the person or property of another” for purposes of an ACCA crime of violence.